

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES BOYD

Petitioner,

VS.

TONY MOORE

Respondent.

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NO. 3-11-CV-2357-D

**FINDINGS AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

James Boyd, an inmate confined at the Red Onion State Prison in Pound, Virginia, has filed a form section 2254 habeas petition naming an individual identified as "Tony Moore" as respondent. The court notes that petitioner does not come close to satisfying the requirements of the Rules Governing Section 2254 Cases. Not only has petitioner failed to answer most of the questions on the court-approved form, but he provides no information about the underlying state court judgment and does not specify any grounds for relief or facts supporting any potential claims. *See* RULES GOVERNING SECTION 2254 CASES, Rules 2(b) & (c). Nor would this court have jurisdiction to adjudicate a habeas petition challenging a conviction from a Virginia court. *See* 28 U.S.C. § 2241(d) (application for a writ of habeas corpus must be filed in the federal district court for the district wherein the petitioner is in custody or where the state court that convicted and sentenced petitioner is located).

Based on prior filings by petitioner in other cases, it appears that this is yet another attempt to sue Virginia prison officials for alleged violations relating to the conditions of his confinement.

Recently, this court prohibited petitioner, who is "three-strikes" barred under the PLRA,¹ from filing any civil action to which the PLRA applies "without prepaying the requisite filing fee or making a showing of imminent danger of serious physical injury." *Boyd v. Sweeney*, No. 3-11-CV-0747-D, Doc. #9 (N.D. Tex. Jun. 29, 2011). No such showing has been made here. Accordingly, this case should be summarily dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

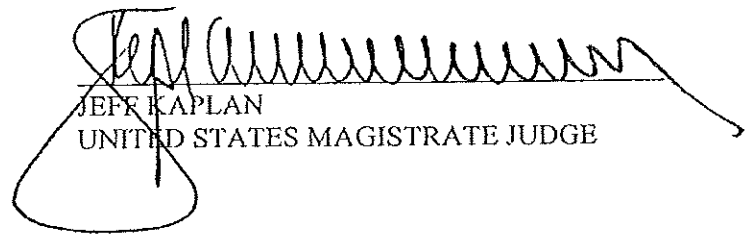
RECOMMENDATION

This case should be construed as a non-habeas action and summarily dismissed without prejudice under the "three strikes" provision of the PLRA, 28 U.S.C. § 1915(g).

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

¹ As noted by the court in one of petitioner's prior lawsuits, a review of the U.S. Party and Case Index reveals that he has filed more than 40 lawsuits in the United States District Court for the Western District of Virginia. *See Boyd v. Shelton*, No. 3-08-CV-1520-P, 2008 WL 4539548 at *2 n.1 (N.D. Tex. Oct. 8, 2008), *citing* <http://pacer.uspci.uscourts.gov/cgi-bin/dquery.pl>. In addition, at least four prior actions brought by petitioner in this district have been dismissed under the "three strikes" provision of the PLRA. *See Boyd v. Sweeney*, No. 3-11-CV-0747-D (N.D. Tex. Jun. 29, 2011); *Shelton*, 2008 WL 4539548; *Boyd v. Kasper*, No. 3-06-CV-2159-B, 2007 WL 30069 (N.D. Tex. Jan. 3, 2007); *Boyd v. Phipps*, No. 3-06-CV-2095-G, 2006 WL 3635590 (N.D. Tex. Dec. 13, 2006).

DATED: September 16, 2011.



JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE